IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

ST.Rev..No. 371 of 2004

AGAINST THE ORDER IN TA.229/2001 DTD/ 6.6.2002
of AGRL.I.T.ADDL.BENCH,KOZHIKODE

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REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA,
REPRESENTED BY
DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES,
ERNAKULAM.

BY SPL.GOVT. PLEADER SRI. VINOD CHANDRAN.

RESPONDENT/APPELLANT/ASSESSEE:

M/S. ASSOCIATED CEMENT COMPANY LTD.,
THALASSERY.

BY ADV. SRI.R.RAMADAS

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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S.T.REV. No. 371 of 2004

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Dated this the 23rd day of November, 2007.

ORDER

H.L.DATTU, CJ,

The Tribunal in the appeal filed by the assessee has decided several issues. But in this Tax Revision Case, the State is aggrieved only by that portion of the order, wherein the assessing authority is directed to delete an addition of a sum of Rs.1,50,000/- made by the assessing authority, in the assessment order passed for the assessment year 1994-1995.

2. The assessee before us is a dealer registered under the provisions of Kerala General Sales Tax Act and Central Sales Tax Act. It is a dealer in cement. In the annual returns filed for the assessment year 1994-1995 the assessee has conceded a total and taxable turnover of Rs.138,93,89,920/-.

3. The assessing authority, while completing the assessment, by his order dated 15.3.1999, has made an addition of a sum of Rs.1,50,000/-, though in the pre-assessment notice issued had intended to make an addition of Rs. Two Lakhs.

4. The assessee had questioned the addition so made before the First Appellate Authority in S.T.A. No. 286 of 1999. The First Appellate Authority by its order dated 7.6.2001 has confirmed the addition so made by the assessing authority.

5. Disturbed by the findings and the conclusions reached by the First Appellate Authority while confirming the addition made by the assessing authority, the assessee was before the Sales Tax Appellate Tribunal in T.A. 229 of 2001. The Tribunal has deleted the addition so made. In its order the Tribunal has

stated, at paragraph 5, as under:

> "5. We have considered the arguments of the appellant and also the rival contention of the Revenue. The first issue to be decided in this appeal is whether the assessing authority is justified in making an addition of Rs.1,50,000/- on the ground of imposition of penalty under Section 29A of the Act, by the Intelligence Officer, Squad No.I, Ernakulam. The appellant in this case is a cement manufacturer whose total turnover during the year exceeds 150 crores. They have marketed their branded cement throughout the State of Kerala. It is seen from the records that the sales tax officials had detained this vehicle many times during the year under assessment. On subsequent verification it was found that the transactions were duly accounted and the security amount collected from them were refunded. The assessing authority has failed to establish that the transactions have not been passed through the accounts. The Intelligence Officer had collected security for some technical defect noticed in the delivery note used for the transport of cement. Considering the above fact we find no justification in making a nominal addition of Rs.1,50,000/- to the accounted turnover of more than Rs.150 Crores. We therefore direct the assessing authority to delete the addition of Rs.1,50,000/-."

6. Aggrieved by the deletion so made by the Tribunal, the revenue is before us in this Tax Revision Case. For consideration and decision of this court, the revenue has framed the following questions of law. They are as under:

> "I) Whether on the facts and in the circumstances of the case, Tribunal is justified in entering into finding that the security deposit collected by the Intelligence Officer was only for some technical defect.
>
> 2) Whether on the facts and in the circumstances of the case, Tribunal is justified in deleting the estimation of Rs.1,50,000/- by the Assessing Authority.
>
> 3) Whether on the facts and in the circumstances of the case, the Tribunal is erred in entering into a finding with regard to the legality and proprietory (sic. propriety) of penalty imposed by the Intelligence authorities."

7. Sri. Vinod Chandran, learned counsel appearing for the revenue would submit that the Tribunal was not justified in deleting the additions made by the assessing authority in a sum of Rs.1,50,000/- to the conceded total and taxable turnover of the dealer. Therefore, requests us to modify the orders passed by the Tribunal.

8. Learned counsel appearing for the assessee ably justifies the findings and conclusions reached by the Tribunal.

9. The assessee before us has a huge total and taxable turnover. It is regular in paying taxes due under the Act to the department. The assessee carries on the business of manufacture and sale of cement. One of the consignments of the assessee had been intercepted by the Check Post Officer. Being of the opinion that there is some technical violation of the provisions of sub-section (2) of Section 29 of the Act, had demanded security deposit from the assessee.

10. It is not the case of the department that the security deposit so made by the assessee has been adjusted by the department after passing the orders under Section 29A of the Act.

11. The assessing authority, merely relying upon the orders passed under Section 29A of the Act, without realizing that while the vehicle belonging to the assessee had been intercepted under Section 29 of the Act and the assessee had deposited the security amount for release of the vehicle, which had already been returned to the assessee, has proceeded to make an addition of a sum of Rs1,50,000/- to the conceded turnover. The Tribunal in the appeal filed by the assessee has taken into consideration that if an order is made under Section 29A of the Act, it is expected of the Sales Tax Officer to have adjusted the security deposit made by the assessee when its vehicle had been intercepted by the Check Post Officer. Since the security deposit has already been returned to the petitioner, and since no amount has been collected

from the petitioner after the orders are passed under Section 29A of the Act, the Tribunal is of the opinion that the assessing authority was not justified in making an addition of a sum of Rs.1,50,000/- merely on the ground that the order has been passed under Section 29A of the Act.

12. Having gone through the provisions of the Act and the findings and conclusions reached by the Tribunal, we are of the opinion that the Tribunal was justified in deleting the additions made by the assessing authority. Therefore, we do not see any good reasons to interfere with the orders passed by the Tribunal. Therefore, the revision petition filed by the State requires to be rejected and accordingly, it is rejected. The questions of law framed by the revenue are answered against the revenue and in favour of the assessee.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/DK.